

*In the Matter of the Sheryl Maneice and Terrence Gilliam, Mercer County Board of Social Services*

CSC Docket No. 2011-175

OAL Docket No. 10696-10

**(Civil Service Commission, decided December 7, 2011)**

The appeals of Sheryl Maneice and Terrence Gilliam, Social Workers with the Mercer County Board of Social Services (MCBSS),<sup>1</sup> of their layoffs, effective July 1, 2010, were heard by Administrative Law Judge Lisa James-Beavers (ALJ), who rendered her initial decision on November 4, 2011. Exceptions were filed on behalf of the appointing authority.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on December 7, 2011, did not adopt the ALJ's recommendation to reverse the appellants' layoffs. Rather, the Commission upheld the layoffs.

## **DISCUSSION**

The MCBSS submitted a layoff plan to the Division of State and Local Operations to lay off employees, effective July 1, 2010, due to the decrease of funds for certain positions, including Social Work Supervisor and Social Worker. The layoff plan was approved and notices were sent to the affected employees. Maneice was advised that she would be displaced by a more senior Social Worker and Gilliam was advised that he would be displaced by a Social Work Supervisor. The appellants were also informed that they did not have displacement opportunities and, thus, would be laid off from their positions. Upon the appellants' appeals to the Commission, the matters were transmitted to the Office of Administrative Law (OAL) for hearings as contested cases and were then consolidated.

In the initial decision, the ALJ set forth that due to extensive funding cuts proposed by the Governor, the MCBSS submitted a layoff plan, which indicated that the funding of various areas, including the Medical Transportation Unit, was being reduced. There was a loss of four million dollars in funding. Frank Cirillo, the Director of Welfare, testified that most of the positions that were funded by the affected grants were Social Workers. Cirillo further indicated that this agency was responsible for determining the employees' layoff rights and whether the employees had displacement opportunities. He emphasized that the MCBSS provided information, but it was this agency that decided which employees would be

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<sup>1</sup> Maneice and Gilliam were certified from the Social Worker, MCBSS, special reemployment list. Maneice was appointed, effective December 5, 2011, but Gilliam was not reachable for appointment.

separated. Furthermore, Cirillo maintained that the MCBSS complied with *N.J.A.C. 4A:8-1.3(b)* in that it attempted to lessen the impact of the layoff by placing employees without permanent status and then those with the least seniority in positions being vacated, reclassified, or abolished. However, when asked why more provisional employees were not separated, Cirillo indicated that the MCBSS “took appropriate steps.” Other witnesses testified, including the appellants, who maintained that their layoffs were conducted in bad faith. They asserted that the MCBSS did not separate employees who had less seniority than them or who were provisional employees, such as Clerks and Human Services Specialists. Additionally, the appellants asserted that the appointing authority showed favoritism as certain employees were affiliated with administrators. Furthermore, temporary and seasonal employees were hired, despite the fact that the appointing authority indicated that it would not do so. Additionally, individuals in the Medical Transportation Unit were not laid off despite the fact that the unit’s funding was discontinued. Moreover, the appellants contend that they should have been offered any position since they were permanent employees and were more than qualified to perform lower functions.

Based on the foregoing, the ALJ determined that the MCBSS did not separate non-permanent employees or take other action that would lessen the impact of the layoffs. For instance, the ALJ found that Debra Anderson, a provisional Social Worker, was not laid off. Rather, the appointing authority placed her in an interim Account Clerk position effective July 2, 2010. Furthermore, the ALJ indicated that the appellants were not employed in the Medical Transportation Unit, but were “casualties of bumping rights.” The ALJ determined that the appellants should have been offered openings first prior to any provisional employee. Thus, the ALJ concluded that the MCBSS acted in bad faith when it found another title for Anderson and did not offer the same opportunity to the appellants. Further, the ALJ found that Vincent Conte and Pamela Riley, Human Services Specialists 1,<sup>2</sup> were not separated despite the fact that they were provisional employees. The ALJ determined that MCBSS acted in bad faith in failing to release provisional employees to cut costs as a pre-layoff action as “the law requires.” In that regard, the ALJ cites *N.J.S.A. 11A:8-2a(2)* which provides that an appointing authority shall lessen the possibility, extent, or impact of layoffs by implementing pre-layoff actions, which may include separating non-permanent employees. Additionally, the ALJ indicated that the MCBSS failed to advise the appellants that they had the right to apply for Human Services Specialist positions, even though there is not an “automatic entitlement to them.” Moreover, the ALJ found that there was “at least the appearance of collusion” among the MCBSS, the union, and this agency since the union is led by a Human Services Specialist 3 and only four Human Services Specialist positions were targeted in the layoff plan while 21 Social Workers or Social Work Supervisors were targeted. Therefore, the ALJ

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<sup>2</sup> Conte’s and Riley’s provisional appointments were discontinued, effective September 9, 2011.

concluded that bad faith was evident in not separating non-permanent employees. The ALJ also determined that Human Services Specialists “were protected and saved from” layoff to the detriment of the Social Workers who were targeted for layoff and had more seniority. In this regard, the ALJ determined that Riley failed to disclose her relationship with Chief of Administrative Services Annette Lartigue. Riley’s lack of concern regarding the layoff was found to be “certainly questionable.” Accordingly, the ALJ recommended that the appellants’ layoffs be reversed, as they had established that their layoffs were conducted in bad faith.

In its exceptions, the MCBSS submits that the ALJ misconstrued the legal requirements for a layoff since she did not consider seniority in conjunction with job titles and whether the appellants would have had an opportunity to displace another employee within their department. For example, the MCBSS states that a clerk with 10 years of service would clearly not be eligible to displace a psychologist with only five years of service. The MCBSS argues that the ALJ viewed it as having “one department” with interchangeable employees, regardless of job function and “department.”<sup>3</sup> It maintains that it lost approximately four million dollars in funding, which was as a result of privatization of the Medical Transportation Unit. Most of the staff targeted for layoff consisted of Social Workers within that “department.” Furthermore, it stresses that there were numerous meetings with the union and this agency and employees were advised of their options. There was no collusion. As to Anderson, the MCBSS states that she voluntarily demoted to an Account Clerk position<sup>4</sup> and there was no evidence that anyone else applied for the position. Moreover, regarding Conte and Riley, the MCBSS indicates that they were not employed in the Medical Transportation Unit. As to an alleged relationship between Riley and Lartigue, the MCBSS contends that there is no competent evidence that Riley knew that Lartigue belonged to the same group as she did or that the Lartigue intervened on behalf of Riley. In conclusion, the MCBSS maintains that the ALJ misunderstood the law and her conclusions of bad faith are not supported by the record.

*N.J.S.A.* 11A:8-4 and *N.J.A.C.* 4A:8-2.6(a)1 provide that good faith appeals may be filed based on a claim that the appointing authority laid off or demoted the employee in lieu of layoff for reasons other than economy, efficiency or other related reasons. When a local government has abolished a position, there is a presumption of good faith and the burden is on the employee to show bad faith and that the

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<sup>3</sup> For layoff purposes, the MCBSS is considered one layoff unit, regardless of its various departments. Thus, employees are able to exercise their layoff rights within any unit or department of the MCBSS.

<sup>4</sup> As previously noted, Anderson received an interim appointment as an Account Clerk, effective July 2, 2010. She subsequently received a regular appointment to the non-competitive Clerk 1 title, effective November 8, 2010. She was then provisionally appointed as a Human Services Specialist 1, effective February 14, 2011, but was returned to her permanent title of Clerk 1, effective September 12, 2011.

action taken was not for purposes of economy. *Greco v. Smith*, 40 N.J. Super. 182 (App. Div. 1956); *Schnipper v. North Bergen Township*, 13 N.J. Super. 11 (App. Div. 1951). As the Appellate Division further observed, “That there are considerations other than economy in the abolition of an office or position is of no consequence, if, in fact, the office or position is unnecessary, and can be abolished without impairing departmental efficiency.” *Schnipper, supra* at 15. (emphasis added). The question is not whether the plan or action actually achieved its purpose of saving money, but whether the motive in adopting a plan or action was to accomplish economies or instead to remove a public employee without following N.J.A.C. 4A:8-1 *et seq.* Thus, a good faith layoff exists if there is a logical or reasonable connection between the layoff decision and the personnel action challenged by an employee. Additionally, it is within an appointing authority’s discretion to decide how to achieve its economies. *See Greco, supra.*

On the other hand, N.J.S.A. 11A:2-11h and N.J.A.C. 4A:8-2.6(a)2 provide that a permanent employee or an employee in his or her working test period may file a determination of rights appeal based on a claim that the employee’s layoff rights or seniority were determined and/or applied incorrectly. Such appeals shall be subject to a review of the written record.

Upon a review of this matter, the Commission does not find that the layoffs were for reasons other than economy or efficiency. The MCBSS was faced with the loss of approximately four million dollars in funding, which primarily affected the Medical Transportation Unit and the Social Workers in that unit. There is no dispute that the foregoing occurred.

The appellants argue, however, that their layoffs were conducted in bad faith because the MCBSS did not separate non-permanent employees and attempted to save Human Services Specialists from layoff. Initially, contrary to the ALJ’s findings, N.J.S.A. 11A:8-2a(2) does not mandate that an appointing authority separate non-permanent employees in titles not affected by a layoff. Rather, an appointing authority shall lessen the impact of a layoff by implementing pre-layoff actions, which **may** include separating non-permanent employees. Indeed, retaining a provisional employee may be necessary to meet a critical operational need. Riley and Conte were provisional Human Service Specialists 1. Their positions were not targeted for layoff and no other employee exercised rights to their positions. Thus, they did not have to be separated. Furthermore, Anderson’s provisional appointment as a Social Worker was appropriately terminated at the time of the layoff. Although the MCBSS placed Anderson in an interim Account Clerk position, it had no obligation to place permanent employees in titles to which the employees had no rights or offer such positions to laid off employees. It is emphasized that an employee is entitled to displace another individual if the individual is serving in a title to which the employee has rights. *See e.g., In the Matter of Kenneth Poole* (CSC, decided April 29, 2009) (Although the appellant may

have had more seniority than other employees, he was only entitled to displace another employee if the employee is serving in a title to which the appellant had rights). In this regard, as revealed in the Classification Support System, a Social Worker has lateral title rights to Social Worker Drug Abuse, Social Worker Drug Abuse and Alcoholism Control, Social Worker Health, Social Case Worker, Social Worker Institutions, and Family Service Worker. A Social Worker also has demotional title rights to Social Service Assistant and Social Service Assistant Typing. Thus, a Social Worker does not have title rights to clerical positions or to Human Services Specialist positions. *See e.g., In the Matter of Terrence Gilliam* (CSC, decided August 17, 2011) (The Commission found that the appellant did not have title rights to a Human Services Specialist 1 or Clerk 1 position, and based on his seniority and title, he did not have any available displacement opportunities.) Moreover, the MCBSS was not obligated to offer positions to the appellants despite their qualifications. *See e.g., In the Matter of the Water and Wastewater Utility Employee Layoff, City of Perth Amboy* (CSC, decided May 18, 2011); *In the Matter of Donald G. Miller* (Commissioner of Personnel, decided January 7, 1998), *aff'd on reconsideration* (Commissioner of Personnel, decided November 8, 2001) (Title rights are not based on an individual's actual qualifications.) Therefore, since the record does not demonstrate that the MCBSS violated any laws with respect to separating non-permanent employees or not offering the appellants other positions, the appellants have not established bad faith on the part of the MCBSS.

Furthermore, the ALJ found that Human Services Specialists were saved from layoff without regard to status or seniority to the detriment of Social Workers. It is well established that an appointing authority has the discretion to decide how savings are achieved. *See Greco, supra*. The mere fact that Social Workers were targeted does not demonstrate that the appellants' layoffs were for invidious reasons. *See e.g., In the Matter of Bergen County Layoff*, Docket No. A-5281-03T5 (App. Div. July 15, 2005) (The Appellate Division upheld the elimination of the position of Assistant Tax Administrator for Bergen County and found that it was based on legitimate budgetary reasons. The appellant, who was laid off, was replaced by a "Confidential Assistant" who performed substantially the same duties. The appellant argued that he was targeted because of his political affiliation. However, the court found that the appellant did not present any evidence that he was targeted for layoff based on his political affiliation.)

Moreover, issues with regard to title rights or the seniority of employees are matters not properly before the ALJ. *See e.g., In the Matter of the Passaic County Civilian Employees 2008 Layoffs, Passaic County Sheriff's Office* (CSC, decided August 17, 2011). As indicated above, a layoff rights appeal is subject to a review of the written record and is treated as a separate appeal from the good faith layoff appeal. Indeed, the Commission has already reviewed Gilliam's layoff rights and found that they were properly applied. *See Gilliam, supra*. Additionally, Maneice

filed a title rights appeal which was addressed by letter from staff of the Division of Merit System Practices and Labor Relations and no further appeal was filed.

Therefore, the ALJ's determinations in this matter were not proper, and the appellants have not met their burden of proof. Accordingly, their layoffs are upheld.

### **ORDER**

The Civil Service Commission finds that the appointing authority's actions in imposing layoffs were justified. Therefore, the Commission upholds those actions and dismisses the appellants' appeals.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.